

CHARLES ST. JOHN CHUBB, EXECUTOR OF LEWIS WARRINGTON AND OTHERS.

FEBRUARY 3, 1859.—Committed to a Committee of the Whole House, made the order of the day for to-morrow, and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

CHARLES ST. JOHN CHUBB, EXECUTOR, AND OTHERS,
vs.
THE UNITED STATES.

1. The petition of the claimant.
2. Miscellaneous Document of the House of Representatives No. 74, 30th Congress, 1st session, agreed to be read in evidence, transmitted to the House of Representatives.
3. Two letters from the Secretary of the Navy, transmitted to the House of Representatives.
4. United States Solicitor's brief.
5. Opinion of the Court adverse to the claim.

By order of the Court of Claims.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court, at Washington, this third day of February,
[L. S.] A. D. 1859.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the honorable the Judges of the United States Court of Claims:

The petition of Charles St. John Chubb, executor of the last will and testament of Lewis Warrington, Philip F. Voorhees, John Percival, Herman Thorn, and Eliza Hamilton, administratrix of the estate of C. B. Hamilton, most respectfully represents: That on the 29th of April, 1814, the officers and crew of the United States sloop-of-war Peacock (Lewis Warrington being then commander of the Peacock

John B. Nicholson being lieutenant of said vessel, Philip F. Voorhees being then a lieutenant of said vessel, Herman Thorn being then purser of said vessel, John Percival being then sailing-master of said vessel, and C. B. Hamilton being surgeon of said vessel) captured, after a well-contested action, his Britannic Majesty's sloop-of-war *Epervier*, and conducted her with her crew into the port of Savannah. That she was there libelled, and decreed by the district court of the United States as "prize of war to the captors," the decree of the court being, as shown by a certified copy thereof from the records of that court, herewith filed, being exhibit A in the accompanying printed documents, at page 7 of said exhibit, as follows, viz: "It is ordered, adjudged, and decreed, that the said sloop-of-war *Epervier*, her tackle, apparel, guns, and other implements of war, be condemned as prize of war to the captors, and sold, after due notice, by the marshal, and the proceeds be distributed as the law directs respecting captures made by the public armed vessels of the United States, after payment of costs and charges." The *Epervier* had on board certain specie, which was also decreed by said court (as shown by said exhibit A, on page 15) as "prize of war to the captors, to be distributed." "The captors" were the persons mentioned as above in this petition, and the other officers and the crew. But Mr. John Eppinger, the marshal, after selling the *Epervier* and receiving the proceeds, made the mistake of paying one-half thereof, and one-half of the specie captured in the *Epervier*, into the treasury of the United States; and the object of this petition is to make a respectful application that *this*, their property, be restored to them.

The law of the United States passed April 23, 1800, directs, respecting captures, as follows: "The proceeds of all ships and vessels, and the goods taken on board of them, which shall be adjudged good prize, shall, when of equal or superior force to the vessel or vessels making the capture, be the *SOLE property of the captors*."

That the *Epervier* was of "equal force" to the *Peacock* is shown as follows: The law of July 16, 1798, shows that the "*force*" of a vessel is the number of guns, which law is as follows: "*Be it enacted, &c.*, That the sum of six hundred thousand dollars shall be, and hereby is, appropriated to enable the President of the United States to cause to be built and equipped three ships or vessels, to be of a force not less than thirty-two guns each, and of the dimensions and model which he shall deem most advantageous," &c. That the *Epervier* was of equal force to the *Peacock* is officially shown by the *United States*, as follows: The Secretary of the Navy, in an official report to the Senate, dated March 14, 1814, transmits a table of the names, rates, &c., of the vessels of the United States navy, of which exhibit B is an extract, in which the force of the *Peacock* is shown to be eighteen guns; and said Secretary, in an official report to the Senate, dated October 3, 1814, transmits the official report of the commander of the *Peacock* of the capture of the *Epervier*, of which exhibit C is a copy, in which the *Epervier* is officially stated to be of the force of eighteen guns. Also, the official report of Lieutenant John B. Nicholson of her arrival, exhibit D, proves her to be of the force of eighteen guns. Thus the *Peacock* and *Epervier* being proved by the United States official reports

to be of "equal force," "the proceeds of" the *Epervier*, and "the goods taken on board," were, in the language of said law, "the sole property of the captors;" and therefore the decree of the court, as above mentioned, that the *Epervier* and specie was "prize of war to the captors" was in accordance with said law and said official report of the Navy Department.

Three other official communications of the Navy Department demonstrate that it was the decision of that department that the captors possessed the sole interest in the *Epervier*, viz: One of June 11, 1814, exhibit F, states: "In respect to your prize, the *Epervier*, * * *

* * * I am ready to negotiate with any agent authorized by the captors for the purchase of the *Epervier*." This communication does not state for the half of the *Epervier*, but for the *Epervier*, thereby expressing the *whole* of the *Epervier*. The communication of June 16, 1814, exhibit G, states: "It is, however, proper that the prize and her stores should be preserved in good order for the 'benefit of the captors;'" thus stating for the benefit of the captors, not for the benefit of the captors and the United States jointly. The letter of the Navy Department of July 24, 1814, exhibit H, states: "I regret that no agent for the captors has yet appeared to negotiate with this department for the sale of the *Epervier*." This letter does not state for the captors' half of the *Epervier*, but for "the *Epervier*," thereby expressing the *whole* of the *Epervier*.

But the marshal, Mr. John Eppinger, after selling the *Epervier* and receiving the proceeds of the sale, made the mistake of paying one-half of the same, and one-half of the specie captured, into the treasury of the United States, as shown by the receipts of James Marshall, cashier, at page 17 of exhibit A, and as also shown by the official statement of said John Eppinger, marshal, dated August 12, 1814, exhibit I; and, but for your petitioners being away at sea at the time, contending for their country's rights in neglect of their own, they would have prevented this mistake.

That their title to it was a VESTED right, which, so far from being divested by the mistake of the district marshal in paying it into the treasury, instead of to the captors, *could not be divested even by the extensive power of Congress itself*, is shown by the solemn decision of the Attorney General of October 17, 1820, in another prize case, at page 296 of published "Opinions of Attorneys General," as follows: "In my opinion, Congress intended nothing more by this act than to substitute the \$255,000 in lieu of the proceeds of the sale of the prize vessels, had they been sold under the decree of court, without the most distant intention of affecting, in any manner, the mode of distribution, either as to the quantum or the persons authorized to take; indeed they COULD NOT, IF THEY HAD INTENDED IT, have produced such an effect, because that would have been to DIVEST A VESTED RIGHT."

By the capture the memorialists furnished a valuable vessel, at a time when needed, to the government, and a considerable amount in specie when its credit was low, and they cannot believe that the nation, under *all these* circumstances, will withhold this *debt due* them.

The petitioners respectfully represent that these proceeds thus, 1st, by law solemnly enacted to be "the *sole property* of the captors;"

2d, thus solemnly decreed by the court to be *their property*; 3d, thus shown by the United States official report and law to be a capture from an "equal," and thus a *vested right* acquired by the captors to the whole; and 4th, admitted by the Navy Department in three official communications to be *their property*—*is their property*. They therefore petition your honors that this their property be restored to them, in accordance with the constitutional provision, "nor shall private property be taken for public use without just compensation."

Since this claim has been before Congress, two unfavorable reports (one in the Senate by the committee asking to be discharged) have been made in relation to it, but they were made in consequence of the want of the principal testimony in support of it; since, however, the official testimony has been obtained from the records of the United States court of Georgia, and official correspondence from the Navy Department, *no* adverse report has ever been made. On the contrary, since this official testimony has been obtained, the Senate have, at three different sessions, unanimously passed bills for the relief of the claimants; and the Committee of Naval Affairs of the House of Representatives have made a favorable report three times, which were not reached; all of which will fully appear by the documents accompanying Senate bill No. 35, on the calendar of the House of Representatives, referred by a resolution of that House to your honorable Court.

The action in Congress on this claim is as follows, viz: On May 2, 1836, memorial referred in Senate to Committee on Naval Affairs, and nothing done. On January 9, 1837, referred in Senate to Committee on Naval Affairs, and nothing done. On March 21, 1838, referred in Senate to Committee on Naval Affairs, and on July 7, 1838, committee discharged from further consideration of it. In 28th Congress, 1st session, on January 23, 1844, in the House of Representatives, memorial was referred to Committee on Naval Affairs, which, on February 28, 1844, made an adverse report, vide page 505 of Journal. In 30th Congress, 1st session, on April 26, 1848, as vide its Journal, page 735, bill No. 435 was reported, and memorial and documents accompanying ordered to be printed, being Miscellaneous Document No. 74, and not reached on the calendar. In 31st Congress, 1st session, Committee on Naval Affairs reported bill No. 210, and report No. 202, vide page 728 of its Journal; and at same session, Senate bill No. 121 passed Senate on August 19, 1850, as vide page 564 of its Journal; and as House bill No. 210 had been previously referred to Committee of the Whole, bill 564 was referred to Committee of the Whole, and bill not reached for debate. In 31st Congress, 2d session, on March 3, 1851, Mr. Schenck moved, as vide page 438 Journal, Committee of the Whole be discharged from further consideration—ayes 69, noes 48, not two-thirds; and on same day Mr. Meade made same motion, but not two-thirds. Being the last working day of the session, there was an intense pressure of the public business, and *still there was a very large majority* in favor of Committee of the Whole being discharged, which discharge, as is well known to your honorable Court, *is considered as a test question*, and shows that *the sense of a very large majority was for its passage*. In 31st Congress, 2d session, bill No. 38 passed Senate on February 7, 1852, as vide its

Journal, page 188, and on February 12, 1852, as vide House Journal, page 345, was referred to Committee on Naval Affairs; which Committee, though desirous to report the bill, was not reached in the call of committees for reports by the Speaker, during the *only remaining* 19 days of the session. In the 33d Congress, 1st session, bill No. 35 passed the Senate, as vide its Journal, page 107, on January 17, 1854; and this bill was reported favorably in the House of Representatives on June 13, 1854, vide page 997 of its Journal, but not reached for debate in consequence of the pressure of the public business before the House of Representatives. And, as in duty bound, your petitioners will ever pray.

Your petitioners further show that their respective shares in the said prize money, under the act of Congress, remain their property respectively, and that no other persons are interested therein.

CHARLES ST. JOHN CHUBB,
Executor of the last will and testament of Lewis Warrington.

PHILIP F. VÖORHEES.

JOHN PERCIVAL.

HERMAN THORN.

ELIZA HAMILTON,

Administratrix of the estate of C. B. Hamilton,
By ISAAC N. COFFIN.

DISTRICT OF COLUMBIA, }
Washington county, } ss.

Before me, a justice of the peace in and for said county, on this fifth day of May, 1856, personally appeared Isaac N. Coffin, agent of the above named petitioners, and made oath that the facts stated in the said petition are true to the best of his knowledge and belief.

B. K. MORSELL, *J. P.*

COURT OF CLAIMS.—No. 585.

Cases of the executor of Commodore Warrington and others, captors of the British sloop-of-war Epervier.

It is agreed that the record of the Prize court and the other public and official documents contained in the printed document of the House of Representatives, 30th Congress, 1st session, miscellaneous, No. 74, (a copy of which is hereto annexed,) may be read in evidence in these cases from the said printed document.

JAS. D. McPHERSON,
Deputy Solicitor.

BADGER & CARLISLE,
For Claimants.

Memorial of Lewis Warrington, captain in the United States navy, in behalf of himself and the officers and crew of the U. S. sloop-of-war Peacock, praying that one-half of the proceeds of the Epervier and goods, which went into the treasury by mistake, be restored to the officers and crew of said vessel, it having been decreed to them by the United States court as captors, April 26, 1848.

The memorial of the undersigned, a captain in the navy of the United States, in behalf of himself and of the officers and crew of the sloop-of-war Peacock at the time of the capture of the Epervier, most respectfully represents, that on the 29th of April, 1848, they captured, after a well-contested action, his Britannic Majesty's sloop-of-war Epervier, and conducted her, with her crew, into the port of Savannah. That she was there libelled, and decreed by the district court of the United States "as prize of war to the captors," the decree of the court being, as shown by a certified copy thereof from the records of that court, herewith filed, (being exhibit A,) at page 7 of said exhibit, as follows, viz: "It is ordered, adjudged, and decreed that the said sloop-of-war Epervier, her tackle, apparel, guns, and other implements of war, be condemned as prize of war to the captors, and sold after due notice by the marshal, and the proceeds be distributed as the law directs respecting captures made by the public armed vessels of the United States, after payment of costs and charges." The Epervier had on board certain specie, which was also decreed by said court (as shown by said exhibit A, at page 12,) as "prize of war to the captors, to be distributed." "The captors" were the undersigned and the other officers, and the crew. Notwithstanding this, Mr. John Ep-pinger, the marshal, after selling the Epervier and receiving the proceeds, made the mistake of paying one-half thereof, and one-half of the specie captured in the Epervier, into the treasury of the United States; and the object of this memorial is to make a respectful application and demand that this their property be restored to them.

The law of the United States passed April 23, 1800, "directs respecting captures," as follows: "The proceeds of all ships and vessels, and the goods taken on board of them, which shall be adjudged good prize, shall, when of equal or superior force to the vessel or vessels making the capture, be the sole property of the captors."

That the Epervier was of "equal force" to the Peacock, is shown as follows: The law of July 16, 1798, shows that the "*force of a vessel is the number of guns*," which law is as follows; "Be it enacted, &c., That the sum of six hundred thousand dollars shall be, and hereby is appropriated, to enable the President of the United States to cause to be built and equipped three ships or vessels, to be of a force not less than thirty-two guns each, and of the dimensions and model which he shall deem most advantageous," &c. That the Epervier was of equal force to the Peacock, is officially shown by the United States as follows: The Secretary of the Navy, in an official report to the Senate, dated March 14, 1814, transmits a table of the names, rates, &c., of the vessels of the United States navy, of which exhibit B is an extract, in which the force of the Peacock is shown to be

eighteen guns; and said Secretary in an official report to the Senate, dated October 3, 1814, transmits the official report of the commander of the Peacock of the capture of the Epervier, of which exhibit C is a copy, in which the Epervier is officially stated to be of the force of *eighteen* guns. Also, the official report of Lieut. John B. Nicholson, of her arrival (exhibit D) proves her to be of the force of *eighteen* guns. Thus the Peacock and Epervier being proved by United States *official* reports to be of "equal force," "the proceeds of the Epervier," and "the goods taken on board," were, in the language of said law, "the sole property of the captors;" and therefore the decree of the court as above mentioned, that the Epervier and specie was "prize of war to the captors," was in accordance with said law and said official reports of the Navy Department.

That the Navy Department considered the Epervier and goods as *decreed to the captors*, is shown by an official communication from it marked exhibit E, which is as follows; "Enclosed herewith is a copy of the opinion of the Attorney General of the United States on the claim of the marshal of Georgia, for a commission of one and a quarter per cent. on the amount of specie *decreed to the captors* of the sloop Epervier; by which opinion the claim appears to be inadmissible." This claim of the marshal was for $1\frac{1}{4}$ per cent., under the act of Congress of the 28th of February, 1799; and that the $1\frac{1}{4}$ per cent. was charged on the whole amount of specie captured, viz: \$117,903, is shown by the amount charged, viz: \$1,473 78, at page 13 of exhibit A, which amount is *just $1\frac{1}{4}$ per cent. on the whole*. As the commission charged by the marshal thus was on the *whole* specie captured, the Secretary of the Navy, in alluding in that letter to the commission of $1\frac{1}{4}$ per cent. on "the amount of specie decreed to the *captors* of the Epervier," certainly declares that the *whole* of the specie was decreed to the captors.

Three other official communications of the Navy Department demonstrate that it was the decision of that department that the captors possessed the sole interest in the Epervier, viz: one of June 11, 1814, (exhibit F,) states: "In respect to your prize, the Epervier, * * I am ready to negotiate with any agent, authorized by the *captors for the purchase of the Epervier*." This communication does not state for the half of the Epervier, but for *the Epervier*, thereby expressing the *whole* of the Epervier. The communication of June 16, 1814, (exhibit G,) states: "It is however, proper that the prize and her stores should be preserved in good order for *the benefit of the captors*," thus stating, for the benefit of the *captors*, not for the benefit of the captors and the United States jointly. The letter of the Navy Department of July 24, 1814, (exhibit H,) states: "I regret that no agent for the captors has yet appeared to negotiate with this department for the sale of *the Epervier*." This letter does not state for the captors' half of the Epervier, but for "the Epervier," thereby expressing *the whole* of the Epervier.

Notwithstanding all these facts, the marshal, Mr. John Eppinger, (who was in the habit of making mistakes, as shown on the preceding page in relation to the commission,) after selling the Epervier and receiving the proceeds of the sale, made the mistake of paying one-half of the same, and one-half of the specie captured, into the Treasury

of the United States, as shown by the receipts of James Marshall, cashier, at page 13 of exhibit A, and as also shown by the official statement of said John Eppinger, marshal, dated August 12, 1814, (exhibit I;) and but for your memorialists being away at sea at the time, *contending for their COUNTRY'S rights, in neglect of their own*, they would have prevented this mistake.

That their title to it was a VESTED right—which, so far from being divested by the mistake of *the district marshal* in paying it into the treasury instead of to the captors, *could not be divested even by the extensive power of Congress itself*, with its act signed by the Executive, is shown by the solemn decision of the Attorney General, of October 17, 1820, in another prize case, at page 296 of published “Opinions of Attorneys General,” as follows: “In my opinion, Congress intended nothing more by this act than to substitute the \$255,000 in lieu of the proceeds of the sale of the prize vessels, had they been sold under the decree of court, without the most distant intention of affecting, in any manner, the mode of distribution, either as to the quantum or the persons authorized to take; indeed, they COULD NOT, IF THEY HAD INTENDED IT, have produced such an effect, because that would have been to DIVEST A VESTED RIGHT.”

By *compound* interest, the amount due your memorialists would have increased to thirteen times the original sum—which advantage the United States have had from the use of memorialists' property; but your memorialists pray for the restoration of the principal *only*. By the capture the memorialists furnished a valuable vessel, at a time when needed, to the government, and a considerable amount in specie when its credit was low, and they cannot believe that the nation, under *all these* circumstances, will withhold this *debt due* them.

The memorialists respectfully represent that these proceeds—thus, 1st, by law solemnly enacted to be “the *sole property* of the captors;” 2d, thus solemnly decreed by the court to be *their property*; 3d, thus shown by United States official reports and law to be a capture from an “equal,” and thus a *vested right* acquired by the captors to the whole; and, 4th, admitted by the Navy Department, in four official communications, to be *their property*—is *their property*. They therefore memorialize your honorable body, and hereby make a respectful application that their property be restored to them, in accordance with the constitutional provision, “nor shall private property be taken for public use without just compensation.”

L. WARRINGTON,

For himself and the officers and crew of the United States sloop Peacock.

EXHIBIT A.

DISTRICT OF GEORGIA, *in the admiralty.*

To the honorable William Stephens, judge of the district court of the United States for the Georgia district.

The libel of Lewis Warrington, esq., commander of the United States sloop-of-war Peacock, on behalf as well of the United States, as

of himself and the officers and crew of the said United States sloop-of-war Peacock, against the British sloop-of-war Epervier, her tackle, apparel, and guns, and other implements of war.

The said libellant, for and on behalf as aforesaid, doth hereby propound, allege, and declare to this honorable court as follows, to wit:

First. That war and a state of hostilities exist between the United States of America and their Territories, and the United Kingdom of Great Britain and Ireland and the dependencies thereof, and captures and seizures of enemies's property authorized and enjoined on all officers of the United States; this libellant therefore, in and with the United States sloop-of-war Peacock, and her officers and crew, on the twenty-ninth day of April last past, did subdue, seize, and take upon the high seas the said British sloop-of-war Epervier, with her apparel, appurtenances, guns, and other implements of war, and have brought the said British sloop-of-war Epervier into the port of Savannah, and within the jurisdiction of this honorable court.

Secondly. That the said British sloop-of-war Epervier, at the time of the said capture thereof, was under the command of Richard Wales, esq., an officer in the service of his Britannic Majesty, and this libellant avers the British sloop-of-war Epervier, at the time of the said capture, was an armed British vessel, sailing under the flag of Great Britain, and navigated by subjects of Great Britain.

Lastly. This libellant doth allege, propound, and declare, that all and singular the premises are and were true, public, and notorious, and that by the law of the United States of America, as well as by the laws of nations, the said British sloop-of-war Epervier, with her tackle, apparel, guns, and other implements of war, became, and was, and is forfeited. And due proof being made, the libellant prays that the said British sloop-of-war Epervier, her tackle, apparel, guns, and other implements of war, may, by warrant under the seal of this court, be attached, and the usual process and monition of this court in this behalf be made; and all persons having or claiming any interest in the said British sloop-of-war Epervier, her tackle, apparel, guns, and other implements of war, or any part thereof, may be cited to appear at a special court of admiralty to be held at the court-house in the city of Savannah, in said district, on the twenty-eighth day of July instant, to answer the premises; and that right and justice may be duly administered in this behalf, and all due proceedings being had, that the said British sloop-of-war Epervier, her tackle, apparel, guns, and other implements of war, for the causes aforesaid and others appearing, may by the definitive sentence and decree of this honorable court be condemned as forfeited, to be distributed as by law is provided respecting the captures made by the public armed vessels of the United States.

C. HARRIS, *District Attorney.*

Libel filed July 14, 1814.

JNO. J. BULLOCH, *Clerk.*

Let the usual process and monition issue, returnable the 28th day of July, 1814.

W. STEPHENS.

UNITED STATES OF AMERICA, } In the admiralty.
 District of Georgia, }

The President of the United States to the marshal of said district, greeting:

Whereas a libel hath this day been filed in the admiralty court of the United States for said district, by Lewis Warrington, esq., commander of the United States sloop-of-war Peacock, in behalf as well of the United States as of himself and the officers and crew of the said United States sloop-of-war Peacock, against the British sloop-of-war Epervier, her tackle, apparel, and guns, and other implements of war:

That war and a state of hostilities exist between the United States of America and their Territories, and the United Kingdom of Great Britain and Ireland, and the dependencies thereof, and captures and seizures of enemies' property authorized and enjoined on all officers of the United States: That the libellant, therefore, in and with the United States sloop-of-war Peacock, and her officers and crew, on the twenty-ninth day of April last past, did subdue, seize, and take upon the high seas the said British sloop-of-war Epervier, with her apparel, appurtenances, guns, and other implements of war, and have brought the said British sloop-of-war Epervier into the port of Savannah, and within the jurisdiction of this honorable court.

That the said British sloop-of-war Epervier, at the time of the said capture thereof, was under the command of Richard Wales, esq., an officer in the service of his Britannic Majesty: That the said sloop-of-war Epervier, at the time of the said capture, was an armed British vessel, sailing under the flag of Great Britain, and navigated by subjects of Great Britain.

Now, therefore, you, the said marshal, are hereby commanded to arrest, detain, and take into your custody, possession, and safe keeping, the said British sloop-of-war Epervier, until the court shall make further order in the premises, and for your so doing this shall be your sufficient warrant.

Given under the seal of said court; and whatsoever you shall do in the premises certify and make known to the judge of said court, at Savannah, on the twenty-eighth day of July instant, and have then and there this writ. Witness the honorable William Stephens, judge of said court, this fifteenth day of July, in the year of our Lord eighteen hundred and fourteen.

CHARLES HARRIS,
District Attorney.

[L. S.] JOHN J. BULLOCH, *Clerk.*

MARSHAL'S OFFICE, *July 16, 1814.*

By virtue of the within warrant of arrest to me, I have caused to be arrested the British sloop-of-war Epervier, her tackle, apparel, guns, &c., as within commanded.

The return of—

JOHN EPPINGER, *M. D. G.*

UNITED STATES OF AMERICA, } In the admiralty.
District of Georgia,

*The President of the United States to the marshal of said district,
greeting:*

Whereas a libel hath this day been filed in the admiralty court of said district by Lewis Warrington, esq., commander of the United States sloop-of-war Peacock, stating that war and a state of hostilities exist between the United States of America and their Territories, and the United Kingdom of Great Britain and Ireland, and the dependencies thereof, and captures and seizures of enemies' property authorized and enjoined on all officers of the United States: That the libellant, therefore, in and with the United States sloop-of-war Peacock, her officers and crew, did, on the 29th day of April last past, subdue, seize, and take upon the high seas the British sloop-of-war Epervier, with her apparel, appurtenances, guns, and other implements of war, and has brought the said sloop-of-war Epervier into the port of Savannah, and within the jurisdiction of this honorable court.

Now, therefore, you, the said marshal, are hereby commanded to cite and admonish all and every person and persons having or claiming any interest in the British sloop-of-war Epervier, her tackle, apparel, guns, and other implements of war, or any part thereof, to appear at a special court of admiralty to be held at the court-house in the city of Savannah, in said district, on the twenty-eighth day of July instant, to answer the premises, and that right and justice may be duly administered in this behalf. And whatsoever you shall do in the premises, certify and make known to the judge of said court at the time and place aforesaid, and have then and there this writ. Witness the honorable William Stephens, judge of the district court of the United States for the district of Georgia, this fifteenth day of July, in the year eighteen hundred and fourteen.

C. HARRIS,
District Attorney.

[L. S.] JOHN J. BULLOCH, *Clerk.*

All persons interested in the foregoing monition will take due notice.
JNO. EPPINGER, *Marshal.*

MARSHAL'S OFFICE, *Savannah, July 28, 1814.*

In obedience to the within monition, I have caused all persons concerned to be cited, to appear before your honor this day, as within commanded.

The return of—

JNO. EPPINGER, *M. D. G.*

At a special court of admiralty held at the court-house in Savannah, on Thursday, the 28th day of July, in the year of our Lord eighteen hundred and fourteen, before the honorable William Stephens:

LEWIS WARRINGTON, commander }
 U. S. sloop-of-war Peacock, } Libel as prize of war.
vs.
 BRITISH SLOOP-OF-WAR EPERVIER. }

Warrant and monition returned; deposition of William Chesson taken and reduced to writing. Proclamation made by the marshal, and this first default recorded by order of court.

LEWIS WARRINGTON, commander of the United }
 States sloop-of-war Peacock, in behalf, &c., } Libel as prize of war.
vs.
 BRITISH SLOOP-OF-WAR EPERVIER, &c. }

Personally appeared William Chesson, midshipman on board said sloop-of-war Epervier, who being duly sworn, saith that said sloop-of-war Epervier was captured by the sloop of-war Peacock, Lewis Warrington commander, on the twenty-ninth day of April last.

W. CHESSON.

Sworn to in open court this 28th April, 1814, before me.

JNO. J. BULLOCH, *Clerk.*

At a court of admiralty, held at the court-house in the city of Savannah, agreeably to adjournment, on Friday, 29th day of July, 1814, before the honorable William Stephens:

LEWIS WARRINGTON, commander of the United }
 States sloop-of-war Peacock, &c., } Libel as prize of war.
vs.
 BRITISH SLOOP-OF-WAR EPERVIER, &c. }

Proclamation made by the marshal, and this second default recorded by order of court.

At a court of admiralty, held at the court-house in the city of Savannah, agreeably to adjournment, on Monday the first day of August, 1814, before the honorable William Stephens:

LEWIS WARRINGTON, commander of the United }
 States sloop-of-war Peacock, &c., } Libel as prize of war.
vs.
 BRITISH SLOOP-OF-WAR EPERVIER, &c. }

Proclamation made by the marshal, and this third default recorded by order of court.

UNITED STATES VESSEL-OF-WAR PEACOCK, }
vs. } Libel as prize.
 BRITISH SLOOP-OF-WAR EPERVIER, &c. }

The United States vessel-of-war Peacock, commanded by Lewis Warrington, esq., captured his Britannic Majesty's sloop-of-war Epervier, and brought her into this port; she has been libelled by the

district attorney. The usual monition has been published, and proclamations made, and defaults duly recorded. No claimant appearing, it is ordered, adjudged, and decreed that the said sloop-of-war Epervier, her tackle, apparel, guns, and other implements of war, be condemned as prize of war, to the captors, and sold after due notice by the marshal, and the proceeds be distributed as the law directs respecting captures made by the public armed vessels of the United States, after payment of costs and charges.

W. STEPHENS.

AUGUST 1, 1814.

UNITED STATES,	}	Prize of war to the United States sloop Peacock.— <i>In admiralty.</i>
vs.		
BRITISH SLOOP-OF-WAR EPERVIER,	}	

Mr. L. Tilton, left in charge of the Epervier, by Captain Warrington, until a regular condemnation had taken place, and as a midshipman, entitled to a proportion of prize-money, as well of specie as the sales of Epervier, and withal having been very sick, and now ordered on to Washington by the Secretary of the Navy with the flags of the Epervier, it is ordered that the marshal pay Mr. Tilton one hundred and twenty dollars on account of prize money, he giving duplicate receipts on copies of this order.

W. STEPHENS,
District Judge.

To the MARSHAL of Georgia.

AUGUST 16, 1814.

The marshal will send a copy to the Secretary of the Navy.

DISTRICT OF GEORGIA, *in the admiralty:*

To the Hon. William Stephens, judge of the district court for the district aforesaid, having and holding admiralty jurisdiction:

Be it remembered, that on the seventeenth day of May, in the year of our Lord one thousand eight hundred and fourteen, comes into court Lewis Warrington, esq., commander of the United States (sloop-of-war) Peacock, on behalf as well of the said United States as of himself, the officers, and crew of the said United States sloop-of-war Peacock, by Charles Harris, United States attorney, who doth libel, propound, and allege, as follows:

1. That war exists between the United States of America and their Territories, and the United Kingdom of Great Britain and Ireland and the dependencies thereof, and captures and seizures of enemies' property authorized and enjoined on all public armed vessels of the United States.

2. That on the high seas, on the twenty-ninth day of April last past, the said United States sloop-of-war Peacock, her officers and crew, captured the British sloop-of-war Epervier, having on board one hundred and seventeen thousand nine hundred and three dollars, or

thereabouts, in boxes, which dollars this libellant avers was the property of the government of Great Britain, or of subjects of the said government, and enemies of the United States.

3. That the said one hundred and seventeen thousand nine hundred and three dollars, or thereabouts, in boxes, as aforesaid, being the property of the government of Great Britain, or of subjects of the said government, and liable to condemnation as prize of war, is now in the port of Savannah, and within the jurisdiction of this honorable court for legal inquiry.

This libellant, in behalf as aforesaid, doth aver that all and singular the premises are and were true, public, and notorious, and that due proof being made, he humbly prays that the said one hundred and seventeen thousand nine hundred and three dollars, or thereabouts, may by warrant, under the seal of this honorable court, be attached, and that the usual process and monition in this behalf be made, and that all persons concerned or interested in the said sum of money in gold and silver aforesaid, or any part thereof, may be cited to appear at a special court of admiralty to be held at the court-house, in the city of Savannah, in the district aforesaid, on the first day of June, to answer the premises; and that right and justice may be duly administered in this behalf, and all due proceedings being had, that the said sum of money in gold and silver may, by the definitive sentence and decree of this honorable court, be condemned as prize of war and forfeited, to be distributed as by law is provided in cases of captures made by the public armed vessels of the United States, and according to the course of proceeding in this honorable court.

C. HARRIS, *District Attorney.*

Let the usual monition issue, returnable the —.

UNITED STATES OF AMERICA, { In the admiralty.
District of Georgia.

The President of the United States to the marshal of said district, greeting:

Whereas a libel hath this day been filed in the admiralty court of the United States for the district aforesaid, by Lewis Warrington, esq., commander of the United States sloop-of-war Peacock, against one hundred and seventeen thousand nine hundred and three dollars, or thereabouts, in boxes, taken from on board the British sloop-of-war Epervier. Now, therefore, you, the said marshal, are hereby commanded to arrest, detain, and take into your custody, possession, and safekeeping, the said sum of one hundred and seventeen thousand nine hundred and three dollars until the court shall make further order in the premises; and for your so doing this shall be your sufficient warrant.

Given under the seal of said court; and whatsoever you shall do in the premises, certify and make known to the judge of said court at Savannah, on the first day of June next, and have then and there this writ.

Witness, the honorable William Stephens, judge of said court, this seventeenth day of May, in the year eighteen hundred and fourteen.

CHARLES HARRIS,
District Attorney.

[L. S.] JOHN J. BULLOCH, *Clerk.*

MARSHAL'S OFFICE, GEORGIA,
Savannah, May 24, 1814.

Served a copy of the within on James Marshall, cashier of the Planters' Bank, in person.

The return of

JOHN J. ROBERTS,
Deputy Marshal.

SAVANNAH, *May 26, 1814.*

By virtue of the within warrant to me directed, I have arrested the sum of \$117,903 09, as within commanded, and have the same in bank.

The return of

JOHN EPPINGER, *M. D. G.*

UNITED STATES OF AMERICA, } In the admiralty.
District of Georgia

The President of the United States to the marshal of said district, greeting:

Whereas a libel hath this day been filed in the admiralty court of the United States for the district aforesaid, by Lewis Warrington, esq., commander of the United States sloop-of-war *Peacock*, on behalf as well of the said United States as of himself, the officers and crew of the said United States sloop-of-war *Peacock*, stating that war exists between the United States of America and their Territories and the United Kingdom of Great Britain and Ireland and the dependencies thereof, and captures and seizures of enemies' property authorized and enjoined on all public armed vessels of the United States; that on the high seas, on the twenty-ninth day of April last past, the said United States sloop-of-war *Peacock*, her officers and crew, captured the British sloop-of-war *Epervier*, having on board one hundred and seventeen thousand nine hundred and three dollars, or thereabouts, in boxes, which dollars this libellant avers were the property of the government of Great Britain, or of the subjects of said government, and enemies of the United States; that the same one hundred and seventeen thousand nine hundred and three dollars, or thereabouts, in boxes, as aforesaid, being the property of the government of Great Britain, or of subjects of the said government, and liable to condemnation as prize of war, is now in the port of Savannah and within the jurisdiction of this honorable court for legal inquiry: Now, therefore, you, the said marshal, are hereby commanded to cite and admonish all and every person and persons having or claiming any interest in the said one hundred and seventeen thousand nine hundred and three dollars, or any part thereof, to appear at a special court of admiralty to be held at the court-house in the city of Savannah, in the district aforesaid, on the first day of

June, to answer the premises, and that right and justice may be duly administered in this behalf. And whatsoever you shall do in the premises and in this behalf, certify and make known to the judge of said court at the time and place aforesaid, and have then and there this writ.

Witness, the honorable William Stephens, judge of the district court of the United States for the district of Georgia, this seventeenth day of May, in the year of our Lord one thousand eight hundred and fourteen.

CHARLES HARRIS,
District Attorney.

[L. S.] JOHN J. BULLOCH, *Clerk.*

All persons interested in the foregoing monition will take due notice
JOHN EPPINGER, *Marshal.*

Marshal's return.

MARSHAL'S OFFICE, *June 1, 1814.*

In obedience to the within monition I have caused all persons concerned to be cited to appear before your honor this day, by publishing the same in the Evening Ledger, and posting a copy at the court-house in Savannah.

The return of

JOHN EPPINGER, *M. D. G.*

Court met on the 10th of June, 1814, at the court-house in Savannah. Present, Hon. William Stephens, judge.

THE UNITED STATES VESSEL-OF-WAR PEACOCK	} Libel as prize.
<i>vs.</i>	
\$117,903 captured in the EPERVIER.	

The United States vessel-of-war Peacock, commanded by Lewis Warrington, esq., in the late capture of his Britannic Majesty's sloop-of-war Epervier, brought into this port, captured also, in dollars, one hundred and seventeen thousand nine hundred and three dollars, which has been libelled by the district attorney. The usual monition has been published, and proclamations made, and the defaults duly recorded. No claimant appearing, it is ordered, adjudged and decreed, that the said sum of one hundred and seventeen thousand nine hundred and three dollars be condemned as prize of war to the captors, to be distributed as the law directs on captures made by the public armed vessels of the United States, after payment of costs and charges.

W. STEPHENS,
District Judge, Georgia.

Ordered that a certified copy of the above be sent to the Secretary of the Navy, as also a copy of the demand of the marshal for his commissions, and that the same be forwarded by the attorney for the district.

W. STEPHENS.

JUNE 10, 1814.

*Marshal's Statement.*UNITED STATES, *District of Georgia.*

LEWIS WARRINGTON, esq., commander of the	} n the admiralty. Li- bel and condemnation as prize.
United States sloop-of-war Peacock.	
<i>vs.</i>	
\$117,903 taken from on board the	
BRITISH SLOOP-OF-WAR EPERVIER.	

Amount arrested.....	\$117,903 09
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Charges.

Taxed costs.....	\$93 91	
Commission.....	1,473 78	
	<hr/>	1,567 69
Balance.....		<hr/> 116,335 40

Distribution.

One moiety to the captors.....	\$58,167 70	
One moiety to the United States, paid		
cashier of Planters' Bank.....	58,167 70	
	<hr/>	116,335 40
		<hr/> <hr/>

JOHN EPPINGER, *Marshal.*MARSHAL'S OFFICE, *August 18, 1814.*

Commission on \$117,903 09, charged and disallowed by	
government.....	\$1,473 78

Distribution.

One moiety to the captors.....	\$736 89	
One moiety to the United States, paid to cashier		
of Planters' Bank.....	736 89	
	<hr/>	1,473 78
		<hr/> <hr/>

JOHN EPPINGER, *Marshal.*MARSHAL'S OFFICE, *August 18, 1814.*PLANTERS' BANK, *Savannah*, ——— 15, 181 ..

Received of John Eppinger, esq., marshal of Georgia, fifty-eight thousand one hundred and sixty-seven dollars and seventy cents, on account of Thomas T. Tucker, esq., Treasurer of the United States, which sum is entered to his credit in the books of this bank, having signed quadruplicate receipts.

J. MARSHALL, *Cashier.*
By JAS. HUNTER, *Teller.*

PLANTERS' BANK, *Savannah, August 18, 1814.*

Received of John Eppinger, esq., marshal for the district of Georgia, seven hundred and thirty-six dollars and eighty-nine cents, on account of Thomas T. Tucker, esq., Treasurer of the United States, which sum is entered to his credit in the books of this bank, having signed quadruplicate receipts.

J. MARSHALL, *Cashier.*

L. WARRINGTON, commander of the UNITED STATES SLOOP PEACOCK.	} In admiralty. Libel and condemnation as prize.
<i>vs.</i>	
\$117,903 taken from on board the BRITISH SLOOP EPERVIER.	

Amount of moiety to captors.....	\$58,904 59
Deduct—	
Paid midshipman N. Tilton, per order of district judge.....	\$120 00
Postages, Hermon Thorn	50
	<hr/> 120 50
Balance.....	<hr/> 58,784 09 <hr/>

Received, Savannah, March 10, 1815, of John Eppinger, marshal, fifty-eight thousand seven hundred and eighty-four dollars and nine cents, in full of the balance due on the moiety to the captors, per statement above.

C. HARRIS,
Attorney for HERMON THORN,
of the sloop-of-war Peacock.

UNITED STATES,	} In admiralty. Prize of war to United States sloop Peacock.
<i>vs.</i>	
BRITISH BRIG-OF-WAR EPERVIER.	

Mr. N. Tilton, left in charge of the Epervier by Captain Warrington, until a regular condemnation had taken place, and as a midshipman, entitled to a proportion of prize money, as well of specie as the sales of Epervier, and withal having been very sick, and now ordered on to Washington by the Secretary of the Navy with the flags of the Epervier:

It is ordered that the marshal pay Mr. Tilton one hundred and twenty dollars on account of prize money, he giving duplicate receipts, on copies of this order.

W. STEPHENS,
District Judge, Georgia.

To the MARSHAL OF GEORGIA, *August 16, 1814.*

Received, Savannah, August 16, 1814, of John Eppinger, marshal of Georgia, one hundred twenty dollars, on account of my proportion of prize money on the moiety of the net proceeds of sale of the prize sloop-of-war Epervier, and specie, decreed to the captors.

N. TILTON,
Midshipman United States Navy.

DISTRICT OF COLUMBIA, *Washington county*:

Whereas I am fully authorized by the annexed power, jointly and severally with Lyttleton W. Tazewell, to transact all business relative to the interests of the officers and crew of the United States sloop-of-war Peacock in the prize brig the Epervier, and particularly to hold the proceeds to which the said officers and crew may be entitled in the said prize vessel: Now, by virtue of said power and authority so vested, I do hereby nominate and appoint Charles Harris, esq., attorney for the district of Georgia, my lawful substitute and procurator, to demand of, and to receive from John Eppinger, esq., marshal for the district aforesaid, the amount of prize money now in his custody belonging to said officers and crew, and to execute an acquittance or receipt therefor, and to do and perform every act, on the payment over to him of said money, which I might do by virtue of the said delegation of power if personally present, and to hold the said prize money subject to my order. And I do hereby, for and on behalf of said officers and crew, ratify and confirm every and all the acts of my said procurator in the premises.

Given under my hand and seal at Washington city, this 24th day of February, 1815.

HERMON THORN. [L. s.]

Signed and sealed in the presence of

D. RANDALL,
ALEXANDER KERR.

DISTRICT OF COLUMBIA, *Washington county*, ss:

Be it known that on the twenty-fourth day of February, in the year eighteen hundred and fifteen, personally appeared before me, a notary public for the county of Washington, in the District of Columbia, duly commissioned and qualified, Hermon Thorn, who acknowledged the above power, to which his name is affixed, to be his act and deed.

In testimony whereof, I have hereunto set my hand and affixed my [L. s.] notarial seal, the day and year above written.

ALEXANDER KERR,
Notary Public.

Then follows the power of attorney from the officers and crew of the sloop-of-war Peacock to Hermon Thorn and Lyttleton W. Tazewell, which is a voluminous document, and can be furnished if required.

GEORGE GLEN, *Clerk.*

UNITED STATES OF AMERICA, *District of Georgia*, ss:

I, George Glen, clerk of the district court of the United States for the district of Georgia, do hereby certify that the preceding and annexed writing is a true and perfect transcript of the record and proceedings remaining in said court in the cause therein mentioned, taken from and by me carefully compared with the originals filed and being of record in my office.

In witness whereof, I have hereto set my hand and affixed the seal of the said district court, this twenty-ninth day of December, in the year of our Lord one thousand eight hundred and forty-five.

GEORGE GLEN, *Clerk*.

UNITED STATES OF AMERICA, *District of Georgia*, ss:

I, John C. Nicoll, judge of the district court of the United States for the district of Georgia, do hereby certify that George Glen, who signed the within certificate, is, and was at the time of signing the same, the clerk of the district and circuit courts of the United States for the district of Georgia; that full faith and credit ought to be given to his acts and attestations as such, and that his said certificate and authentication of the foregoing transcript is in due form.

In witness whereof, I have hereto set my hand this twenty-ninth day of December, in the year of our Lord 1845.

JOHN C. NICOLL, *District Judge*.

EXHIBIT B.

NAVY DEPARTMENT, *March 4, 1814.*

SIR: Agreeably to your intimation, I have the honor to transmit herewith a list of ships and vessels of the navy of the United States, with the rate, station, and name of the commander of each.

I am, very respectfully, your obedient servant,

W. JONES.

The Hon. JOHN GAILLARD,

Chairman of the Naval Committee, Senate.

Extract from the list above mentioned

Name.	Rate.	Station.	Commander.
* * *	*	* * * *	* * *
Constellation -----	36	Norfolk, under sailing orders ----	Charles Gordon-----
Peacock-----	18	New York, under sailing orders --	Lewis Warrington ---
Enterprise-----	14	Cruising -----	James Renshaw ----

A true extract from the record.

Attest:

JOHN APPLETON,
Chief Clerk Navy Department.

DECEMBER 21, 1846.

EXHIBIT C.

NAVY DEPARTMENT,
October 3, 1814.

SIR: Agreeably to your request, I have the honor to enclose the official account and other papers relating to the capture of the enemy's sloop-of-war Epervier, on the 29th of April last, by the United States sloop-of-war Peacock, commanded by Captain Warrington.

If the relative force and comparative effect of the fire of the combatants, and the speedy termination of the contest, though protracted by the early loss of the Peacock's fore-yard, be taken as the criterion, then does it display a steady valor and superior skill on the part of the commander, officers, and crew of the Peacock, which may fairly challenge any single action on record.

I have the honor to be, very respectfully, sir, your obedient servant,
W. JONES.

The Hon. CHARLES TAIT,
Chairman of the Naval Committee, Senate.

UNITED STATES SLOOP PEACOCK,
At sea, lat. 27° 47', long. 80° 9', April 29, 1814.

SIR: I have the honor to inform you that we have this morning captured, after an action of forty-two minutes, his Majesty's brig Epervier, rating and mounting eighteen thirty-two pound carronades, with one hundred and twenty-eight men, of whom eight were killed and fifteen wounded, (according to the best information we could obtain) Among the latter is her first lieutenant, who has lost an arm and received a severe splinter wound on the hip. Not a man in the Peacock was killed, and only two wounded—neither dangerously so.

The fate of the Epervier would have been determined in much less time but for the circumstance of our fore-yard being totally disabled by two round shot in the starboard quarter from her first broadside, which entirely deprived us of the use of our fore and foretopsails, and compelled us to keep the ship large throughout the remainder of the action. This, with a few topmast and topgallant backstays cut away, and a few shot through our sails, is the only injury the Peacock has sustained. Not a round shot touched our hull; our masts and spars are as sound as ever. When the enemy struck he had five feet of water in his hold, his maintopmast was over the side, his main boom shot away, his foremast cut nearly in two and tottering, his fore-rigging and stays shot away, his bowsprit badly wounded, and forty-five shot holes in his hull, twenty of which were within a foot of his water-line, above and below. By great exertions we got her in sailing order just as dark came on.

In fifteen minutes after the enemy struck the Peacock was ready for another action in every respect but her fore-yard, which was sent down, fixed, and had the foresail set again in forty-five minutes; such was the spirit and activity of our gallant crew.

The Epervier had under her convoy an English hermaphrodite brig, a Russian and a Spanish ship, which all hauled their wind and stood to the E.NE. I had determined upon pursuing the former, but found that it would not answer to leave our prize in her then crippled state; and the more particularly so as we found she had one hundred and twenty thousand dollars in specie, which we soon transferred to this sloop. Every officer, seaman, and marine, did his duty, which is the highest compliment I can pay them.

I am, respectfully,

L. WARRINGTON.

The foregoing are truly copied from the files of the Navy Department.

JOHN APPLETON,

Chief Clerk.

DECEMBER 21, 1846.

EXHIBIT D.

SAVANNAH, GA., *May 1, 1814.*

SIR: I have the honor of informing you of my arrival here in late his Britannic Majesty's brig Epervier, of eighteen thirty-two pound caronades, Captain Wales, captured by the sloop Peacock on Friday morning, the 29th, off cape Carneveral, after an action of forty-five minutes, in which time she was much cut up in hull, spars, rigging, and sails, with upwards of five feet of water in her hold, having the advantage of the weather-gauge. She lost eight killed and fifteen wounded, among the latter her first lieutenant, who has lost his arm. I am happy to say the Peacock received no material injury—her fore-yard and *two* men slightly wounded. She received not one shot in her hull. The brig had upwards of \$100,000 on board.

I have the honor to be, respectfully, your obedient servant,

JOHN B. NICOLSON.

Hon. WILLIAM JONES.

NAVY DEPARTMENT, *December 23, 1846.*

A true copy. Attest:

JOHN APPLETON,

Chief Clerk.

EXHIBIT E.

NAVY DEPARTMENT, *July 28, 1814.*

SIR: Enclosed herewith is a copy of the opinion of the Attorney General of the United States on the claim of a marshal of Georgia for a commission of one and a quarter per cent. on the amount of specie decreed to the captors of the sloop Epervier, by which opinion the claim appears to be inadmissible.

I have the honor to be, very respectfully, your obedient servant,

W. JONES.

CHARLES HARRIS, Esq.,

District Attorney, Savannah, Georgia.

NAVY DEPARTMENT, *December 12, 1846.*

A true copy of record. Attest:

JOHN APPLETON,
Chief Clerk Navy Department.

EXHIBIT F.

NAVY DEPARTMENT, *June 11, 1814.*

SIR: * * * * *

In respect to your prize, the Epervier, the department is disposed, after she shall have gone through the regular ordeal of the district court, to purchase her for the public service at her fair and full value; for which purpose I am ready to negotiate with any agent authorized by the captors, for the purchase of the Epervier, together with all her armament, equipment, and stores of what kind soever, including every thing captured on board and belonging to the vessel. Whatever, therefore, may have been taken out of the prize, either for the use of the Adams or of the Peacock, will of course be included, and will thus supersede the necessity of a distinct valuation of those articles. It will, however, be desirable that as little should be taken out of the prize as possible, as it will be difficult to replace the articles on that remote and unprovided station.

The department is not disposed to become a competitor at a public sale, as there can be no real private bidders, and it will be better that the court should authorize either a public sale or a private one, by the agent of the captors, to the government of the United States.

* * * * *

I am, respectfully, &c.,

W. JONES.

LEWIS WARRINGTON, Esq.,

*Commanding United States ship Peacock, Savannah.*NAVY DEPARTMENT, *December 14, 1846.*

The foregoing is a true extract from the records of this department.

JOHN APPLETON,
Chief Clerk.

EXHIBIT G.

NAVY DEPARTMENT, *June 16, 1814.*

SIR: Your letter of the 6th instant is received. The Navy Department has no interest in or charge of prize vessels captured by ships of the United States until after condemnation in the admiralty court, and then only where the department becomes the purchaser, either at public sale or by agreement with the captors; and until that point is decided, I can give no instructions respecting the Epervier.

It is however proper that the prize and her stores should be preserved in good order for the benefit of her captors. Lieut. Walpole, however, will lend you any necessary assistance in men, and I presume Captain Warrington has left an agent to represent the interest of the captors, and to whom you will apply for whatever may be required.

I am, respectfully, &c.,

W. JONES.

Midshipman N. TILTON,
U. S. Navy, Savannah, Georgia.

DECEMBER 14, 1846.

A true copy of record.

JOHN APPLETON,
Chief Clerk Navy Department.

EXHIBIT H.

NAVY DEPARTMENT, *July 24, 1814.*

SIR: I have this moment received a letter from C. Harris, esq., attorney for the district of Georgia, saying, "I proceeded immediately to libel the Epervier, and shall obtain a final condemnation in the beginning of August, and an early sale will take place unless you wish it or order it postponed. I suppose you will order her to be purchased, as she cannot bring anything like her value."

I regret that no agent for the captors has yet appeared to negotiate with this department for the sale of the Epervier at an equitable and liberal price, which I am disposed to give, and which, by agreement of the parties, the court would have sanctioned. There appears, however, no alternative but a public sale, at which there will be no real bidders but the public at anything like her value, and justice to the captors forbids that she should be sacrificed. I have therefore determined upon the highest price which I feel myself authorized to go in the purchase of the Epervier for the service of the navy of the United States. You are therefore hereby authorized to purchase the Epervier at public sale, at a sum not exceeding fifty-five thousand dollars, including in the purchase all her armament, ammunition, provisions, stores of all kinds in every department, iron and other ballast, equipments and appurtenances of every description which belonged or was attached to the said vessel at the time of her capture, and free from all charge against said vessel to the day of the sale, and also of the costs of condemnation and court charges. On this subject you will have a clear understanding with the district attorney and the marshal, and recite the foregoing conditions in the bill of sale from the marshal.

I am respectfully, &c.

W. JONES.

A. S. BULLOCH,
Navy Agent, Savannah.

A copy of record.—Attest:

JOHN APPLETON,
Chief Clerk Navy Department.

EXHIBIT I.

Extract from "American State Papers," (volume of Naval Affairs,) page 426.

UNITED STATES, *District of Georgia:*

Marshal's sale on the 11th August, 1814, at Savannah.

LEWIS WARRINGTON, esq., commander of the United States sloop-of-war Peacock, <i>vs.</i>	} In the admiralty. Li- belled and condemned as a prize.
THE BRITISH SLOOP-OF-WAR EPERVIER.	

Amount of sale of the Epervier, her tackle, &c., to the
Navy Department..... \$55,000 00

Charges.

Advertising	\$2 25	
Taxed costs of court.....	76 71	
Custody fees.....	64 00	
Irvine—negro hire, lightering, &c.....	95 50	
Bullock—drayage, pilotage, &c.....	305 45	
Hunter, Mimis, and Henry—storage, &c.....	143 50	
Green, harbor master.....	9 35	
Woodbridge, landing and shipping guns.....	17 00	
Commission	693 75	
		1,407 50
		<u>53,592 50</u>

Distribution.

One moiety to the captors.....	\$26,796 25
One moiety to the United States.....	26,796 25
	<u>53,592 50</u>

JNO. EPPINGER, *Marshal.*

MARSHAL'S OFFICE,
Savannah, August 12, 1814.

Extract from a statement to the Navy Department, by the Fourth Auditor of the Treasury, of prize money received by the United States, entitled "Statement of the proceeds of prizes received from and after the 20th of June, 1812," dated September 16, 1818. Extracted from State Papers, (Naval Affairs,) page 556.

Name of prizes.	Captured by	Where con- demned.	Paid over by.	When paid.	Amount paid.
* * *	* * *	* * *	* * *	* * *	* * *
Ship Epervier..	Ship Peacock	Georgia --	J. Eppinger -	August 14, 1814..	\$26,796 25

EXHIBIT K.

Extract from the decree of the district court of the United States for the district of New York, in the case of

“THE UNITED STATES OF AMERICA, and the officers and crew of the United States frigate *United States*, *vs.* THE FRIGATE *MACEDONIAN*, her tackle, apparel and furniture, arms, stores, and ammunition,” extracted from State Papers, (Naval Affairs,) page 425; [showing that this decree is in almost the exact language of the decree of condemnation in the case of the *Epervier* and the whole amount of the proceeds of the *Macedonian* was paid to the captors, therefore as this decree decreed the proceeds of the *Macedonian* to the captors equally so did the decree in the case of the *Epervier* decree the proceeds to her captors, and *not* to the captors and the United States jointly; otherwise each would have been mentioned as in the decree on the following page, in the case of the *Constitution vs. the Cyane*:]

“The court doth pronounce, decree, and declare that the said frigate or ship *Macedonian*, her tackle, apparel and furniture, and the arms, stores, and ammunition taken on board of the same, be adjudged and condemned as good and lawful prize to the commander, officers and crew of the said United States ship-of-war *United States*, the captors thereof.”

In the case, however, of the *Cyane*, a ship of *inferior* force, captured by the United States ship *Constitution*, the decree of the court decrees the *Cyane* to be the property of the *United States* and the captors, as the following decree will show; and as in the case of the *Epervier*, the decree decrees the property *not* to the *United States* and the captors, as in the case of the *Cyane*, but to the captors, the decree of the *Epervier* decrees the whole to the captors.

“THE UNITED STATES OF AMERICA, and the officers and crew of the United States frigate *Constitution*, *vs.* THE SHIP *CYANE*, her armament, tackle, apparel and furniture, and stores.”—(From State Papers, “Naval Affairs,” page 418.)

“It is ordered, sentenced, and decreed by the court, that the said ship *Cyane*, her armament, tackle, apparel and furniture, and stores, be and the same are hereby condemned as good and lawful prize to the *United States* and the captors aforesaid: and it is further ordered that the said ship *Cyane*, her armament, tackle, apparel and furniture, and stores, be sold by the marshal according to law.”

EXHIBIT L.

Extracts from decisions of the United States courts, showing that to whomsoever prize property is condemned, it vests the right to such property or its proceeds, in such persons or corporation. If condemned to the captors, then the decree vests it in the captors; if condemned to the United States, then the decree vests it in the United States.

“If the national character of captured property appears doubtful, or even neutral, and no claim is interposed, the court will delay the

final decree for a reasonable time; which time has, by the general usage of nations, been fixed to a year and a day after the institution of the prize proceedings; and if no claim is made within that time, the property is deemed abandoned, and is *condemned to the captors*, for contumacy and default of the supposed owners."—(The Harrison, 1 Wheaton, 298.)

"But if the capture be made by a non-commissioned captor, the prize will be *condemned to the United States*."—(3 Peters' Digest, page 367. The Pizarro, 2 Wheat.; 4 Cond. Rep., 103.)

"Property forfeited under a municipal law, but taken trading with the enemy, was *condemned to the captors*, not to the United States." (3 Peters' Digest, page 376. The Rapid, 1 Gallis. C. C. R., 295. The St. Lawrence, *ibid*, 472.)

"The vessel and cargo were *condemned as prize to the captors*."—(3 Peters' Digest, page 377. The Alexander, 8 Cranch, 169; 3 Cond. Rep., 72.)

"If captured on the high seas by a commissioned vessel, the property may be *condemned to the captors as enemy's property*; if captured by an uncommissioned ship, the capture is still valid, and the property must be *condemned to the United States*."—(3 Peters' Digest, page 378. The Caledonian, 4 Wheat., 100; 4 Cond. Rep., 401.)

These repeated judicial decisions prove, beyond all doubt, that when the courts of the United States use the words "the captors," they mean the officers and crew of a ship-of-war, and not the United States.

EXHIBIT M.

Communication of the Navy Department to the chairman of the Committee on Naval Affairs, in the case of the Guerrier, showing that the usage of the Navy Department is to consider the number of guns of each vessel as the criterion which decides the captured vessel to be of equal or superior force to the vessel making the capture.

[From State Papers, "Naval Affairs," page 275, communicated to the House of Representatives, November 25, 1812.]

NAVY DEPARTMENT, November 21, 1812.

SIR: In order to enable the committee to form a satisfactory opinion as to the compensation to be provided for the officers and crew of the frigate Constitution, for the capture and subsequent destruction of the British frigate, the Guerrier, I have the honor to state to you that the Constitution rated 44 and mounted 55 guns; that the Guerrier rated 38 and mounted 54 guns. The Guerrier, although entirely dismasted, &c., * * * *

I am, respectfully, &c.,

PAUL HAMILTON.

Hon. B. BASSETT.

EXHIBIT N.

RESOLUTION expressive of the sense of Congress relative to the victory of the Peacock over the Epervier.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be requested to present to Captain Lewis Warrington, of the sloop-of-war Peacock, a gold medal, with suitable emblems and devices; and a silver medal, with like emblems and devices, to each of the commissioned officers, and a sword to each of the midshipmen and to the sailing master, of the said vessel, in testimony of the high sense entertained by Congress of the gallantry and good conduct of the officers and crew in the action with the British brig Epervier, on the twenty-ninth day of April, in the year one thousand eight hundred and fourteen, in which action the decisive effect and great superiority of the American gunnery were so signally displayed.

Approved October 21, 1814.

NAVY DEPARTMENT, *May 7, 1857.*

SIR: In reply to your letter of the 30th ultimo, desiring information touching the comparative tonnage or size of the British sloop Epervier and United States ship Peacock, weight of metal, and strength of the crews at the time of the capture of the former by the latter named vessel, I have to state that it appears that the Epervier was a brig of 18 guns, 16 32-pounders and 2 18-pound carronades, and had a crew of 128 men. The Peacock was a ship of 22 guns, 2 long 12s and 20 32 pound carronades, and had a crew of 160 men.

So far as the department is aware, the above are all the facts in the points referred to shown by its records.

Very respectfully, your obedient servant,

I. TOUCEY.

JOHN D. McPHERSON, Esq.,

Deputy Solicitor of the Court of Claims, Washington, D. C.

NAVY DEPARTMENT, *January 12, 1859.*

SIR: Your letter of the 6th instant has been received. You are informed, in reply, that all the "32-pounders" on the Epervier were carronades, but the "long 12s" on the Peacock were not.

I am, respectfully, your obedient servant,

ISAAC TOUCEY.

JOHN D. McPHERSON, Esq.,

Deputy Solicitor of the Court of Claims.

IN THE COURT OF CLAIMS.—No. 585.

L. WARRINGTON'S REPRESENTATIVES ET AL. *vs.* THE UNITED STATES.*Brief of United States Solicitor.*

In April, 1814, the British sloop-of-war *Epervier* was captured by the United States ship *Peacock*. The *Epervier* was sent into Savannah, Georgia, condemned as prize of war, and sold by the marshal, who paid half the proceeds into the treasury and distributed the remaining half among the officers and crew of the *Peacock*. He made the same disposition of the specie found on board the *Epervier*, amounting to nearly \$120,000.

The petitioners allege that the marshal erred in paying any portion of the money to the United States; that the two vessels were of equal force, which fact, under the act of April 23, 1800, entitles the captors to the entire proceeds of the captured vessel and goods on board; and that, moreover, the vessel and money were condemned to the captors by the decree of the district court condemning the same.

The evidence in this case consists of the proceedings of the district court and official documents connected with the transaction at the time.

I. As to the alleged equality of force.

It is admitted that the *Peacock* and *Epervier* were both rated as vessels of 16 guns, the guns being 32-pounders, and that the *Peacock* was borne on the Navy Register as a 16-gun ship.

It is, however, stated in a letter from Mr. Toucey, Secretary of the Navy, dated May 7, 1857, that both vessels at the time of the capture carried more guns than they were rated at—the *Epervier* having 18 and the *Peacock* 22. The crew of the *Epervier* numbered 128 men; that of the *Peacock* 160 men.

The petitioners argue that the guns were the measure of force, citing the act of July 16, 1798. This may be admitted, but the act does not determine whether the guns which measure the force are the guns for which the vessel is rated or the guns which she actually carries. If the direction contained in the act to build vessels "of a force not less than 32 guns each" would not be satisfied unless by piercing the ship for 32 guns and mounting them on the gun deck, in addition to any guns that might be mounted on the spar deck, then the position would be sustained; but no authority for such a construction of the act is shown.

It is admitted that in the several cases cited for petitioners the officers and crews of the United States vessels received the entire proceeds of the British vessels captured by them, although the latter at the time of the capture carried fewer guns than the former. It is also admitted that the district court, in condemning the *Macedonian*, declared she was of equal force with the United States, whereas, in fact, the United States carried most guns. But the disparity in guns does not appear on the record. We know not on what evidence as to force the court proceeded.

II. *As to the operation of the decree.*

1st. The decree condemns the *Epervier* as prize of war to the captors. It is admitted that this form of decree in the British prize courts carries the property in the vessel to the officers and men who made the capture.

But we contend that this operation is due to the terms of the British prize act, which gives the captured vessel itself to the captors and reserves no part whatever to the crown.—(Lord Camden *vs.* Home, 2 H. B., 533, and Statute in 1 H. B., 197.) Whereas, our prize act disposes of “the proceeds” only, not of the vessel. The right of the prize being in the United States, can be disposed of only by law, and the decree of the court could not carry the property in the vessel of the captors. Prize is a technical term to express a legal capture, (Ship Resolution, 2 Dall., 1,) and under the provisions of our prize act the decree must therefore be understood to declare the vessel a legal capture.

2d. But the effective part of the decree is that which directs the sale of the vessel and the distribution of the proceeds “as the law directs respecting captures made by public armed vessels of the United States.” It is argued by petitioners’ counsel that this distribution must be confined to those to whom the vessel was condemned; and, again, that the word “distribution” does not properly apply to a division of equal moieties between two parties. We answer that distribution is a word of general signification, comprehending any rate of apportionment whatever, as in distribution by executors, &c. Nor is distribution confined to those to whom the vessel is condemned, for the vessel may be [and the court said should be] condemned to the United States, while the proceeds are to be distributed.—(Dos Hermanos, 2 Wh., 76.)

We contend that the decree makes the act of Congress the rule of distribution, and does not qualify it in any respect. The question of distribution does not arise before condemnation. The conflicting claims of persons entitled to share should be settled after condemnation.—(The *Amiable Isabella*, 6 Wh., 1.)

III. *As to proceedings after the decree.*

But the United States may claim under the decree itself. We admit that the term “captors” in the act directing distribution includes only officers and men of the capturing vessels. But this construction may be due to the context, not the force of the term itself, and a different sense is attached to it by writers on admiralty law, (Note to 2 Wh. Sup. Ct. Reports, p. 427 and *passim*.) and by the courts. Captures by privateers are generally, if not always, condemned to the captors, which, of course, must include the owners. The brig *Ernstern*, 2 Dall., 34; Brig *Gloucester*, 2 Dall., 37; The *Rapid*, 8 Cranch, 155; The *Alexander*, *id.*, 169; The *Sally*, *id.*, 382, afford examples of this, and in the case of the *Gloucester* the court said that under the form of privateers’ commissions the ship

and crew were captors. "The ship is figuratively considered as an agent, and represents the owners." And again: "The ship, captain, officers, and crew were joint tenants of the right to capture and make prizes conceded by the commission." The same reasoning applies to national vessels. Their commission is by law. The right to capture is in the ship, not in the officers commanding or in the crew. Captures made by crews, &c., of a national vessel, on board a vessel not belonging to the navy, are deemed to be made by non-commissioned captors.—(Dos Hermanos, 2 Wheaton, 98, and note, p. 505, citing 5 Rob., 51; id., 280; 4 Rob., 282, note a.)

Or if the United States could not claim as captor under the decree, it was perfectly competent for it to contest the right of the captors after condemnation and before distribution. In the *Amiable Isabella*, 6 Wh., 1, the court said this could be done after condemnation, and before decree of distribution. Both condemnation and distribution were by the same decree in the case at bar, but the opinion of the court in *Andrew vs. Wall* (3 How., 568) seems to extend this right to the time of actual distribution, and (p. 573) refers to the exercise of it as familiar practice in prize cases.

IV. *As to payment by the marshal.*

The marshal before making distribution should, for his own safety, have procured an order from the court, (*Brig Gloucester*, 2 Dall., 37,) and it is moreover the duty of the court to ascertain the persons entitled to a share of the proceeds.—(The *St. Lawrence and Cargo*, 2 Gallis., 20.) If, then, the other captors meant to contest the right of the United States to receive a moiety of the proceeds, they should have raised the objection before distribution, when the question could have been adjudicated by the proper tribunal. By acquiescence in the proceedings of the marshal, and especially by receiving their portion without objection, they have lost the right to recover against him, (*Schooner Collector*, 6 Wheat., 194,) and unless they could recover against the marshal no action will lie against the United States, who are contesting claimants, and between whom and the petitioners there is no privity of contract.

JNO. D. McPHERSON,
Deputy Solicitor.

IN THE COURT OF CLAIMS.

CHARLES ST. JOHN CHUBB, EXECUTOR, AND OTHERS, *vs.* THE UNITED STATES.

Judge BLACKFORD delivered the opinion of the Court.

The petition states that on the 29th of April, 1814, the officers and crew of the United States sloop-of-war *Peacock* captured the British sloop-of-war *Epervier*, and conducted her into the port of Savannah; that she was there libelled, and decreed by the district court of the

United States as prize of war to the captors, (see Exhibit A;) that the Epervier had on board certain specie, which was also decreed by said court as prize of war to the captors to be distributed, (see Exhibit A;) that the captors were the persons mentioned above, and the other officers and the crew; that the marshal, John Eppinger, after selling the Epervier and receiving the proceeds, made the mistake of paying one-half thereof, and one-half of the specie captured in the Epervier, into the treasury of the United States. The prayer of the petition is that this, their property, be restored to them.

The evidence is substantially as follows:

The record of the two suits mentioned in the petition as Exhibit A. This record shows the libel against the Epervier, her tackle, apparel, guns, and other implements of war; the warrant of arrest, and its return served; the monition, and its return served. It also shows proof of the capture of the Epervier by the Peacock, as alleged in the petition; three separate defaults, and the following decree rendered on the 1st of August, 1814, viz:

"The United States vessel-of-war Peacock, commanded by Lewis Warrington, esq., captured his Britannic Majesty's ship-of-war Epervier, and brought her into this port; she has been libelled by the district attorney. The usual monition has been published, and proclamation made, and defaults duly recorded. No claimant appearing, it is ordered, adjudged, and decreed, that the said sloop-of-war Epervier, her tackle, apparel, guns, and other implements of war, be condemned as prize of war to the captors, and sold after due notice by the marshal, and the proceeds be distributed, as the law directs respecting captures made by the public armed vessels of the United States, after payment of costs and charges."

The record aforesaid also shows a libel against the specie mentioned in the petition, viz: \$117,903; the warrant of arrest, and its return served; the monition, and its return served; and the following decree rendered on the 10th of June, 1814, viz:

"The United States vessel-of-war Peacock, commanded by Lewis Warrington, esq., in the late capture of his Britannic Majesty's sloop-of-war Epervier, brought to this port, captured also in dollars, one hundred and seventeen thousand nine hundred and three dollars, which has been libelled by the district attorney. The usual monition has been published, and proclamations made, and the defaults duly recorded. No claimant appearing, it is ordered, adjudged, and decreed, that the said sum of \$117,903 be condemned as prize of war to the captors, to be distributed as the law directs on captures made by the public armed vessels of the United States, after payment of costs and charges."

It also appears that the marshal paid (costs deducted) one-half of said specie, namely, \$58,904 59 into the Planter's Bank, at Savannah, on account of the Treasurer of the United States; the last part of the payment being made August 18, 1814.

It appears, by a letter of the Secretary of the Navy, (Exhibit B,) dated March 4, 1814, that the Peacock rated 18 guns.

According to Captain Warrington's official account of the capture,

dated April 29, 1814, (Exhibit C,) the Epervier mounted 18 thirty-two pound carronades, and had 128 men.

Lieutenant Nicholson, on May 1, 1814, (Exhibit D,) informs the Secretary of the Navy of his arrival at Savannah, in the Epervier, "of 18 thirty-two pound carronades."

Exhibit E is a letter from the Secretary of the Navy to the district attorney at Savannah, enclosing an opinion of the Attorney General relative to the marshal's claim of a commission on the specie decreed to the captors of the Epervier.

Exhibit F is a letter from the Secretary of the Navy to Lewis Warrington, dated June 11, 1814, in which he says: "In respect to your prize, the Epervier, the department is disposed, after she shall have gone through the regular ordeal of the district court, to purchase her for the public service at her fair and full value."

Exhibit G is a letter from the Secretary of the Navy to the navy agent, Savannah, dated June 15, 1814, which, after saying that the department has no charge of prize vessels until purchased by it, says: "It is, however, proper that the prize and her stores should be preserved in good order for the benefit of the captors. Lieutenant Walpole, however, will send you any necessary assistance in men, and I presume Captain Warrington has left an agent to represent the interest of the captors, and to whom you will apply for whatever may be required."

Exhibit H is a letter from the Secretary of the Navy to the navy agent, Savannah. The Secretary here says: "I regret that no agent for the captors has yet appeared to negotiate with this department for the sale of the Epervier at an equitable and liberal price, which I am disposed to give, and which, by agreement of the parties, the court would have sanctioned. There appears, however, no alternative but a public sale, at which there will be no real bidder but the public at anything like her value; and justice to the captors forbids that she should be sacrificed. I have, therefore, determined upon the highest price which I feel myself authorized to go in the purchase of the Epervier for the service of the United States. You are therefore hereby authorized to purchase the Epervier at public sale, at a sum not exceeding \$55,000, including in the purchase all her armament," &c.

Exhibit I is the marshal's account of the sale of the Epervier, her tackle, &c., to the United States for \$55,000; of which sum the marshal paid into the treasury of the United States \$26,796 25, being one-half of the net proceeds of the sale.

Exhibit K gives copies of decrees in the cases of *The United States of America and the officers and crew of the United States vs. The Frigate Macedonian*, her tackle, apparel, and furniture, arms, stores, and ammunition; and of *The United States of America and the officers and crew of the United States frigate Constitution vs. The Ship Cyane*, her armament, tackle, apparel, furniture, and stores.—(State Papers, Naval Affairs, 418.)

Exhibit L contains a reference to authorities.

Exhibit M is the following letter from the Navy Department to the chairman of the Committee on Naval Affairs of the 21st November, 1812:

"SIR: In order to enable the committee to form a satisfactory opinion as to the compensation to be provided for the officers and crew of the frigate Constitution, for the capture and subsequent destruction of the British frigate the Guerriere, I have the honor to state to you that the Constitution rated forty-four and mounted fifty-five guns; that the Guerriere rated thirty-eight and mounted fifty-four guns. The Guerriere, although entirely dismasted, &c. * * *

"PAUL HAMILTON.

"Hon. B. BASSETT."

Exhibit N is a resolution of Congress relative to the victory of the Peacock over the Epervier.

We have now set out the substance of the evidence. The claimants were the captors of the Epervier. The prize money amounted to \$171,401 68; one-half of which was paid by the marshal to the claimants, and the other half to the United States. The claimants contend that they were entitled to the whole of the \$171,401 68, and they bring this suit to recover from the United States the one-half of that sum, which one-half was illegally (as they say) paid to the United States by the marshal in 1814.

They rest their claim on two grounds:

First. That as the decrees condemn the Epervier and the specie as prize to the captors, the whole amount was thus vested in the claimants.

Secondly. That independently of that effect of the decrees, the claimants were entitled by law to the whole, because the Epervier was of equal or superior force to the Peacock.

As to the first question: The decree in the first suit condemns the Epervier, her tackle, apparel, guns, and other implements of war, as prize of war to the captors. In order to ascertain the effect of that decree we must look to the allegations of the libel and to what decree of condemnation the court had authority to render. The libel against the ship was substantially as follows: That the libellant, Lewis Warrington, commander of the United States sloop-of-war Peacock, on behalf as well of the United States as of himself and the officers and crew, alleges that war existed between the United States and Great Britain, and that captures of enemies' property were enjoined on all officers of the United States; that the libellant, therefore, with said sloop-of-war, her officers, and crew, on the 29th of April, 1814, captured on the high seas the British sloop-of-war Epervier, her apparel, &c., which was at the time commanded by a British officer, and was sailing under the British flag; that the Epervier, therefore, became forfeited. Prayer that the Epervier, her tackle, &c., may be attached, the persons interested cited, and that by the definitive decree of the court she be condemned as forfeited, to be distributed as by law is provided respecting the captures made by the public armed vessels of the United States.

Those facts contained in the libel make out a case for a decree of condemnation against the Epervier as prize of war to the United States; and that is all. To entitle the officers and crew of the Peacock to the whole of the property, they would have to allege and

prove that the *Epervier* was of equal or superior force to the *Peacock*. There was no allegation before the court relative to the force of either of the vessels, and, of course, the question as to whether the officers and crew of the *Peacock* were entitled to the whole or only the one-half of the prize or its proceeds, was not before the court, and they therefore had no authority to decide it. The capture was by a public armed ship belonging to the United States; and the officers and crew were employed and paid by the United States. In the case of such a capture, the only proper libel to be filed is a libel in the name of the United States showing the legality of the capture; and the only proper decree of condemnation in such case is, that the captured ship be condemned as prize of war to the United States. Even in England, where the captors, in the case of captures by national ships, take the whole of the prize, the libel is in the name of the king; and the decree of condemnation is, that the ship be adjudged and condemned as good and lawful prize to the king.—(Marriott's Formulary, 159, 198.)

"It is an elementary principle of prize law (says Mr. Wheaton) that all rights of prize belong originally to the government, (the *Melomarne*, 4 Rob., 4,) and the beneficial interests derived to others can proceed only from the grant of the government, and therefore all captures, wherever made, enure to the use of the government, unless they have been granted away.—(The *Elzebe*, 5 Rob., 173; *Sterling vs. Vaughan*, 11 East., 619; The *Maria Francaise*, 6 Rob., 282; The *Joseph*, 1 Gallis, 545.) In cases of public armed ships, duly commissioned for the capture, the condemnation is always to the government, but the proceeds are to be distributed according to the act of the 23d April, 1800, ch. 33, sec. 5 and 6."—(2 Wheat. Rep., Appendix, 71, 72.)

It is not until after the decree of condemnation to the United States in these cases that the inquiry is presented to the court as to the relative force of the two vessels, and as to the disposition of the proceeds of the prize.

The above observations, made with respect to the decree of condemnation against the captured vessel, apply to the decree against the specie which she had on board.

We think, therefore, that since the question as to how much the claimants were entitled to was not before the district court, the said decrees do not prevent us from examining the question. That question, (the second one in the cause,) namely, whether the claimants were entitled to the whole of said sum of \$171,401 68 on the ground that the *Epervier* was of equal or superior force to the *Peacock*, does not appear to be a difficult one to decide.

The act of Congress on the subject is as follows:

"That the proceeds of all ships and vessels, and the goods taken on board of them, which shall be adjudged good prize, shall, when of equal or superior force to the vessel or vessels making the capture, be the sole property of the captors, and when of inferior force, shall be divided equally between the United States and the officers and men making the capture."—(2 Stat. L., 52, sec. 5.)

The allegation in the petition is that the two vessels carried each 18 guns, and were, therefore, of equal force. Captain Warrington's

official report of the capture, dated April 29, 1814, says that the Epervier rated and mounted 18 thirty-two pound carronades, and had 128 men. Lieutenant Nicholson, on his arrival at Savannah with the prize, says, in his report dated May 1, 1814, that the Epervier was a brig of 18 thirty-two pound carronades. The following communications are from the Secretary of the Navy :

“NAVY DEPARTMENT, *May 7, 1785.*

“SIR : In reply to your letter of the 30th ultimo, desiring information touching the comparative tonnage or size of the British sloop-of-war Epervier and the United States ship Peacock, weight of metal, and strength of the crews at the time of the capture of the former by the latter named vessel, I have to state that it appears that the Epervier was a brig of 18 guns—16 thirty-two-pounders and 2 eighteen-pounder carronades—and had a crew of 128 men. The Peacock was a ship of 22 guns—2 long 12s and 20 thirty-two-pounder carronades—and had a crew of 160 men. So far as the department is aware, the above are all the facts in the points referred to shown by its records.

“Very respectfully, your obedient servant,

“I. TOUCEY.

“JOHN D. MCPHERSON, Esq.,

“*Deputy Solicitor Court of Claims.*”

“NAVY DEPARTMENT, *January 12, 1859.*

“SIR : Your letter of the 6th instant has been received. You are informed, in reply, that all the ‘32-pounders’ on the Epervier were carronades, but the long 12s on the Peacock were not.

“I am, respectfully, your obedient servant,

“ISAAC TOUCEY.

“JOHN D. MCPHERSON, Esq.,

“*Deputy Solicitor Court of Claims.*”

There can be no doubt, from this evidence, but that the force of the Peacock was considerably greater than that of the Epervier. She had more guns, and thirty-two men more than the Epervier. The Peacock had twenty-two guns, twenty of which were thirty-two-pounder carronades, the other two were long 12s. The Epervier had in all but eighteen guns, sixteen of which were thirty-two pounder carronades, the other two were eighteen-pounder carronades. The Peacock had one hundred and sixty men, and the Epervier only one hundred and twenty-eight men. The consequence is, that, according to said act of Congress, the officers and crew of the Peacock were only entitled to one-half of the proceeds of the sale of the Epervier, and one-half of the specie found on board of her. That amount was paid to them by the marshal in 1814, soon after the decrees of condemnation were rendered. They have, therefore, in our opinion, no cause of action.